

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

BENJAMIN NEWSOME, Administrator of
the Estate of Joshua Johnson

Plaintiff,

v.

Civil Action No. 2:14cv94

MATTHEW WATSON and MATHEW WILLIAMS,

Defendants.

MOTION TO DISMISS AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6)

Defendants Matthew Watson and Mathew Williams, by counsel, move to dismiss the Amended Complaint herein pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the ground that both Count I and Count II fail to state claims against them on which relief could be granted, more specifically as follows:

1. The facts alleged in the Count I show no violation of any "clearly established" right, so that defendants are entitled to qualified immunity.
2. Violations of "safety rules of police procedure" do not state claims under the Fourth Amendment.
3. Negligence is not the test of liability for a violation of the Fourth Amendment under 42 U.S.C. §1983.
4. Allegations about how the officers conducted themselves before the use of force are irrelevant and cannot be used to attack the use of force.
5. Allegations that the officers violated procedures or safety rules in a way that created or manufactured a situation in which one of them used deadly force do not state a claim for violation of the Fourth Amendment.
6. The Fourth Amendment does not provide a person who is being arrested a right to a means of "egress".

7. Unless the court infers from the facts pled that the decedent reversed his car and backed up while Officer Williams was in harm's way, Count I pleads no fact which shows a causal connection between Williams' actions and the use of deadly force.

8. If the court infers from the facts pled that Johnson reversed his car and backed up, Johnson's act in so doing breaks any causal connection between Williams' actions and the use of deadly force.

9. The alleged violation by Watson in firing his weapon while Williams was in the line of fire is irrelevant to plaintiff's claim, because any such safety rule would exist to protect third parties, not plaintiff's decedent.

10. Once the allegations attacked above are stripped from the Count I, what remains does not state a claim against Watson because no fact is alleged that shows that the use of deadly force was unreasonable or excessive.

11. Count II is a state law battery claim sounding against Officer Watson only and states no claim against Officer Williams. If it is meant to assert a claim against Williams, it fails to do so for most of the reasons stated above with respect to Count I.

12. Count II fails to state a claim against Watson, given the facts that are alleged in the Complaint.

WHEREFORE, defendants Matthew Watson and Mathew Williams pray the court will dismiss Count I with prejudice and award them judgment thereon, and will dismiss count II for lack of subject matter jurisdiction.

MATTHEW WATSON
MATHEW WILLIAMS

_____/s/_____
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CERTIFICATION

I hereby certify that on this 11th day of April, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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